

ADMINISTRATIVE--INTERNAL USE ONLY

29 January 1985

MEMORANDUM FOR: [REDACTED]

STAT

Chief, Information Privacy Division, OIS/DDA

FROM:

J. Kenneth McDonald  
Chief, DCI History Staff

SUBJECT:

CNSS Request for Index to Histories

1. In our discussion yesterday afternoon I think I mentioned that when the FOIA relief bill was first being discussed in 1983 [REDACTED] and others in DO/IMS talked with me about its possible implications for the History Staff, and especially for DO histories in our holdings. I'll attach copies of memoranda for the record I made of discussions on this question.

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2. As you can see, DO was evidently eager to assure Congress that histories would continue to be subject to FOIA requests; I couldn't argue against that, since even DO histories do not fit in any conventional definition of "operational records." Although a hazy recollection of earlier discussions of this issue may have something to do with the [REDACTED] exchange about the denial of the request for an index to histories, it is really a quite separate question. Our histories will not be "designated files," and they remain subject to FOIA requests whether our index is released or denied..

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3. On the other hand, I did protest strongly then against any proposal to make the History Staff a "conduit" for releasing records. My arguments against this idea parallel my concern now over any proposal to release an index to our holdings. I entirely agree with the position that we all took yesterday that the Agency should not give up what appears to be the perfectly legitimate denial of the histories index. My objections focus first on the FOIA demands such a release would make on the Agency, secondly on the potentially devastating implications such a precedent could have on CIA's ability to protect other indexes, and finally on the release of indexes as a back door to a new 'systematic review' requirement.

4. Manpower If the list is released, we can expect extraordinary demands on manpower not only in the History Staff but also in the components treated in the histories. Although we could deny some of the titles on the list, we could expect CNSS and others immediately to request the remaining titles on a sanitized list. The demands on the History Staff would be

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heavy, but since these are mostly component histories, the controlling components would have to take primary responsibility for review. Coordination would be burdensome, and the Agency would have to commit very large resources (including senior officers' time) to review these histories, especially in light of the requirement to sanitize for segregable portions. This burden might raise questions about the viability of the Agency's history program; it would be ironic if conceding the list to CNSS resulted in crippling the Agency's future efforts to document and record its history.

5. Precedent If we release the history index we shall set a precedent for the Agency. It will then be hard, if not impossible, in future to use our legitimate defense that indexes are not subject to FOIA. I doubt if any component relishes the prospect of giving up indexes of their records as shopping lists for FOIA requesters. A decision to release indexes and lists (especially in light of growing computer retrieval capabilities) thus has serious implications for the whole Agency.

6. 'Systematic Review' If the Agency is unwilling--or unable--to deny indexes to its records, the components involved will in effect have to undertake a systematic declassification review of all their listed records upon request. Any FOIA requester who got a list of a component's records could demand this new kind of systematic review, by simply requesting all the documents listed. This is not what the FOI Act intends, and is no doubt the reason that the Act does not consider indexes and lists as records.

J. Kenneth McDonald

Attachments

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